

## **BRIEFING MEMO**

### **Waterville Center for Health and Rehab LLC**

#### **Transfer of Ownership of Mount Saint Joseph Residence and Rehabilitation**

**DATE:** May 27, 2021

**TO:** Jeanne M. Lambrew, Commissioner, DHHS

**THROUGH:** Bill Montejo, Director, Division of Licensing and Certification

**FROM:** Larry Carbonneau, Manager, HealthCare Compliance and Operations  
Richard Lawrence, Senior Health Care Financial Analyst

**SUBJECT:** Certificate of Need for Waterville Center for Health and Rehab LLC

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**ISSUE ACTIVATED BY:** The referenced proposal requires Certificate of Need (CON) approval as defined in "The Maine Certificate of Need Act of 2002," 22 M.R.S.A. §326 et seq., as amended.

**REGISTERED AFFECTED PARTIES:** None

#### **I. BACKGROUND:**

Waterville Center for Health and Rehab LLC ("WCHR") is a Maine limited liability company. As of the date of filing, Michael Biderman is the sole member and manager of WCHR. Effective with the transfer, a minority interest in WCHR will be held by Ikiko Ike, R.N. Michael will have a controlling interest. It is also anticipated that post-transfer, membership interests aggregating less than 5% may be held by Michael's spouse and 2 children. Michael has worked as a professional in the healthcare industry for over twenty years. Currently, he holds ownership interests in and operate three skilled nursing facilities: Brookside Rehab & Healthcare Center in Webster, Massachusetts, Calvert County Nursing Center in Prince Frederick, MD, and Chapel Hill Nursing Home in Randallstown, MD. WCHR, along with these three other facilities, will be part of the Elm Healthcare clinical structure as further detailed in this application. Ms. Ike will be a passive investor. Ms. Ike is a licensed professional nurse with training and certifications from multiple countries. She is currently licensed in the United States and Japan. She holds ownership interests in seven healthcare facilities in four states.

Highwood Realty LLC ("Highwood") is a Maine limited liability company. Michael Biderman is the sole member and manager of Highwood. Highwood will acquire all of the real estate now held by MSJ.

Mount St. Joseph ("MSJ") is a Maine nonprofit, Section 501(c)(3) tax-exempt corporation whose sole member is Trinity Continuing Care Services d/b/a Trinity Senior Living Communities ("TSLC"). MSJ operates a 111-bed licensed nursing facility in Waterville, and also operates 27 assisted living beds and 9 independent living beds, for a total of 147 beds.

## **II. PROJECT DESCRIPTION:**

Under an Operations Transfer Agreement and a Contract of Sale and after receiving a Certificate of Need and other necessary approvals, WCHR will acquire all of the personal and intangible property now held by MSJ, and Highwood will acquire all of the real estate now held by MSJ. As described elsewhere in this Application, after the transaction has been consummated, the WCHR does not intend to substantially change the scope of services or increase or reduce the number of beds at MSJ.

The terms and conditions of the transaction with respect to the transfers of assets and operations are set forth in the Contract of Sale and the Operations Transfer Agreement that have been entered into between WCHR and MSJ.

## **III. HIGHLIGHTS:**

Letter of Intent dated:	December 9, 2020
Licensing Regulatory Meeting held:	January 11, 2021
Technical Assistance Meeting held:	January 13, 2021
CON application filed:	February 26, 2021
CON certified as complete:	February 26, 2021
Public Information Meeting Held	Waived
Public Hearing held:	N/A
Preliminary Analysis released:	May 5, 2021
Close of Public Record	May 26, 2021

## **IV. PUBLIC COMMENTS RECEIVED IN RESPONSE TO THE PRELIMINARY ANALYSIS**

No public comments were received following the release of the preliminary analysis.

## **V. CERTIFICATE OF NEED UNIT ANALYSIS**

### **a) Fit, Willing and Able**

Mount St. Joseph Residence and Rehabilitation (MSJ) is licensed for 111 nursing facility beds (30 skilled beds and 81 dually licensed skilled/nursing beds). Of the 111 nursing facility beds, 18 are categorized as Community Based Specialty Nursing Facility Units that specialize in serving geriatric psychiatric patients. MSJ is also licensed for 27 Level IV PNMI beds. The Fontbonne unit serves 11 residential care patients and the Keystone unit serves 16 geriatric psychiatric patients. MSJ also operates 9 independent living beds. The CONU reviewed the latest nursing home ratings for MSJ which are available at [medicare.gov/care-compare/](https://www.medicare.gov/care-compare/). CMS rates each of the

criteria below using a rating of 1 to 5 stars. 1 star is much below average, 2 stars are below average, 3 stars are average, 4 stars are above average, and 5 stars are much above average. The results of MSJ's ratings are in the chart below.

Facility	Date of Rating Data	Overall Quality	Health Inspection	Staffing	Quality Measures
Mount. St. Joseph	02/24/2021	2 Stars	1 Star	5 Stars	4 Stars

MSJ received an overall rating of 2 stars (Below average) based on the nursing homes performance on health inspections, staffing and quality of resident care measures. As stated by the applicant, the last annual health inspection was conducted on 10/24/2019 to determine the facilities compliance with 42 CFR 481, subpart B -Requirements for Long Term Care Facilities. The facility had 14 health citations as compared to an average of 8.1 in the U.S. and 5.1 in Maine. None of the deficiencies cited in the survey rose to the level of actual harm or immediate jeopardy. A plan of correction was submitted to address these deficiencies on January 2, 2020 and the plan of correction was accepted on January 6, 2020. Subsequent follow-up visits determined that the facility was in substantial compliance with 42 CFR 481, subpart B – Requirements for Long Term Care Facilities.

Currently MSJ's real estate and operations are under the direct control of Mercy Community Health, Inc. whose sole corporate member is Trinity Continuing Care Services (d/b/a Trinity Senior Living Communities). For more details of the ownership structure of MSJ please see the Trinity Senior Living Communities/Mount St. Joseph Nursing home preliminary analysis completed on June 2, 2016 and available at [https://www.maine.gov/dhhs/dlc/healthcare-oversight/2016\\_healthcare\\_reviews](https://www.maine.gov/dhhs/dlc/healthcare-oversight/2016_healthcare_reviews). As stated earlier in this analysis after the execution of the Operations Transfer Agreement and Contract of Sale WCHR will acquire all of the personal and intangible property of MSJ and Highwood will acquire all of the real estate now held by MSJ. Mr. Michael Biderman will be the sole member and manager of WCHR. This applicant is not currently licensed in the State of Maine therefore CONU looked at the most recent star ratings available for three facilities that Mr. Biderman owns and operates:

Facility	Last Health Inspection	Overall Rating	Health Inspection Rating	Staffing Rating	Quality of Res. Care Rating
Brookside Rehabilitation and HealthCare Center Webster, MA	11/07/2019	3 Stars	2 Stars	2 Stars	5 Stars
Calvert County Nursing Center Prince Frederick MD	07/26/2019	2 Stars	2 Stars	3 Stars	2 Stars
Chapel Hill Nursing Center Randallstown, MD	02/19/2020	1 Star	1 Star	3 Stars	3 Stars

Brookside has two below average ratings in Health Inspections and Staffing. Calvert County has three below average ratings in Overall, Health Inspections and Quality of Resident Care ratings. Chapel Hill has two much below average ratings in Overall and the Health Inspection Rating. CONU also looked at the number of health inspection deficiencies in each facility and compared them to State and National Averages.

Facility	Facility Deficiencies	Avg. State Deficiencies	Avg. U.S. Deficiencies
Brookside Rehabilitation and HealthCare Center Webster, MA	8	9.8	8.1
Calvert County Nursing Center Prince Frederick MD	21	14.9	8.1
Chapel Hill Nursing Center Randallstown, MD	25	14.9	8.1

Brookside has fewer deficiencies than State and National Averages while the number of deficiencies at Calvert County and Chapel Hill exceed State and National averages. The applicant has only recently acquired Calvert County (October 2018) and Chapel Hill (August 2019) and has provided significant documentation regarding efforts to improve the operations of these facilities.

CONU has determined that the applicant has the ability to maintain services at the proper standard of care in other states. In addition, the applicant does not intend to substantially change the scope of services or the number of licensed beds at MSJ and will retain experienced administrative and medical staff. However, due to the applicant's lack of history operating health care facilities in the State of Maine CONU recommends the following condition:

**Condition:** The applicant is to report improvements in quality outcome measures for services affected by the project on an annual basis within 90 days of its fiscal year end beginning with the

time period when the Certificate of Need was approved until a full three years have elapsed since the date of project completion. This report would include, among other elements:

- 1) WCHR's most recent standing under the CMS 5 Star Quality Rating (available at [medicare.gov/care-compare/](http://medicare.gov/care-compare/)) and steps MSJ has taken or will take to maintain positive indicators and improve average or below average indicators.
- 2) A summary of the results of periodic surveys of WCHR carried out by DLC over the past year, and a description of the remedial measures taken to address the identified deficiencies
- 3) An analysis showing key trends at WCHR relating to quality measures, along with a review of the quality improvement steps being undertaken.

### **Deeming of Standard**

As provided for at 22 M.R.S. § 335 (7)(A), if the applicant is a provider of health care services that are substantially similar to those services being reviewed and is licensed in the State, the requirements of this paragraph are deemed to have been met if the services previously provided in the State by the applicant are consistent with applicable licensing and certification standards.

This applicant has not has previously provided similar services in Maine. The deeming standard does not apply.

### **b) Economic Feasibility**

The sale of MSJ will be structured as an asset purchase. WCHR will be the operator and will hold the license and provider agreements and hold title to all personal and intangible property now held by MSJ (The Operations Transfer agreement is on file at CONU). A real estate entity, Highwood will hold title to the real property of MSJ (The Contract of Sale is on file at CONU). The total purchase price for this transaction is \$10,200,000. Approximately 80% of the purchase will be funded with a 3-year mortgage amortized over a twenty-five-year period with an interest rate of 4%. The additional 20% will be funded by outside investors at an interest rate of 12% with no formal repayment terms. \$510,000 from outside investors will be used as short-term working capital with no formal repayment terms. Since this transaction is structured as an asset sale there will be a step-up in cost basis when this transaction is concluded. According to Principle 18.2.3.8 of the Principles of Reimbursement for Nursing Facilities this asset purchase may be subject to depreciation recapture. The final amount of any depreciation recapture will be determined by DHHS Division of Audit prior to closing.

**CONU Comment #4:**

CONU expressed concern regarding the following related party financing arrangement:

**“WCHR plans to finance 80% the \$10,200,000 purchase price with a three-year mortgage amortized over a twenty-five-year period bearing interest at 4%. The loan calls for interest only payments for the first ninety days. The remaining 20% will be financed through investor funds bearing interest at 12% with no formal repayment terms. In addition, short-term working capital funds equal to 5% of the purchase price will be provided by outside investors with no formal repayment terms.”**

Principle 18.5.4 of Chapter III Section 67 Principles of Reimbursement for Nursing Facilities states the following:

**18.5.4 Borrower-lender relationship**

\*18.5.4.1 To be allowable, **interest expense** must be incurred on indebtedness established with lenders or lending organizations not related through control, ownership, or personal relationship to the borrower. Presence of any of these factors could affect the "bargaining" process that usually accompanies the making of a loan and could thus be suggestive of an agreement with higher rates of interest or of unnecessary loans. Loans should be made under terms and conditions that a prudent borrower would make in arm's-length transactions with lending institutions. The Division of Licensing and Certification shall make the determination for written prior approvals. The intent of this provision is to assure that loans are legitimate and needed, and that the interest rate is reasonable. Thus, interest paid by the provider to partners, stockholders, or related organizations of the provider would not be allowed. Where the owner uses his own funds in a business, it is reasonable to treat the funds as invested funds or capital, rather than borrowed funds. Therefore, where interest on loans by partners, stockholders, or related organizations is disallowed as a cost solely because of the relationship factor, the principal of such loans shall be treated as invested funds in the computation of the provider's equity capital

After reviewing the pro forma cost report, it was noted that related party interest in the amount of \$333,000 was correctly deleted from allowable reimbursable costs.

In order to support the financial feasibility of this project the applicant supplied a pro forma cost report for the initial period of operation and financial projections for the next two full years of operations of the acquired facilities. CONU reviewed the underlying assumptions utilized in financial projections and found them reasonable. The documentation submitted by the applicant supports the assertion that this project is financially feasible. Final reimbursement rates associated with this transaction will be computed by DHHS Rate Setting and DHHS Office of Audit.

### MaineCare Neutrality

This project is subject to MaineCare neutrality. MaineCare neutrality is computed by comparing the utilization of MaineCare resources between MSJ and WCHR. The decrease in MaineCare utilization is \$6,922. These calculations are based on 95% occupancy. See below for calculation:

Facility	Beds	Days	Occupancy	Utilization	MaineCare Rate	MaineCare Cost
MSJ NH	93	365	95%	32,248	\$265.66	\$8,567,004
MSJ RCF	11	365	95%	3,814	\$113.53	\$433,003
MSJ NF - CBS	18	365	95%	6,242	\$351.71	\$2,195,374
MSJ RCF-CBS	16	365	95%	5,548	\$243.85	\$1,352,878
Total						\$12,548,259
WCHR NF	93	365	95%	32,248	\$272.79	\$8,796,932
WCHR RCF	11	365	95%	3,814	\$136.48	\$520,535
WCHR NF - CBS	18	365	95%	6,242	\$340.13	\$2,123,091
WCHR RCF-CBS	16	365	95%	5,548	\$198.41	\$1,100,779
Total						\$12,541,337
Surplus						\$6,922

This transaction results in a slight decrease in MaineCare utilization, therefore MaineCare neutrality has been achieved. Although WCHR anticipates an increase in depreciation and interest expense due to this purchase the applicant projects operating costs to be lower due to aligning costs with industry norms. CONU reviewed assumptions regarding payor mix, projected MaineCare, Medicare, Commercial insurance, private pay, and adult day care revenues and found the assumptions to be reasonable. WCHR does not anticipate significant changes to the facilities operations post-transaction and projects only small increases in operating costs in the short-term.

Based on forecasted financial ratios WCHR is projected to have the financial capacity to meet current and future obligations as they are due.

Due to the applicant's limited history operating health care facilities in the State of Maine CONU recommends the following conditions:

**Condition:** The applicant is to report financial results of the project on an annual basis to coincide with the filing of its MaineCare cost report beginning with the time period when the

Certificate of Need was approved until a full three years have elapsed since the date of project completion. This report would include, among other elements:

- 1) A summary income statement and a narrative comparison with the projections set forth in the application.
- 2) A summary of management's plan to sustain or improve operating results in the next twelve months. The summary would include specific measures recently implemented or those planned to be implemented to assure the ongoing economic viability of the facility.

**Condition:** The applicant is to report the acquisition of any additional nursing facility located in Maine or in any other state, where Michael Biderman has a direct or indirect ownership interest of 50% or more, or is a manager having operational control. Such reports shall be made within 30 days of closing on the purchase of the facility beginning from the date of approval of the Certificate of Need until a full three years have elapsed following the date of approval. The report may be made via email. The report should include, among other elements:

- 1) The name and location of the facility or facilities being acquired.
- 2) The date of acquisition.
- 3) Information regarding the direct or indirect ownership interest of 50% or more held by Michael Biderman, and/or his status as a manager having operational control.

### **Deeming of Standard**

As provided for at 22 M.R.S. § 335 (7)(B), if the applicant is a provider of health care services that are substantially similar to those services being reviewed and is licensed in the State, the applicant is deemed to have fulfilled the requirements of this subparagraph if the services provided in the State by the applicant during the most recent 3-year period are of similar size and scope and are consistent with applicable licensing and certification standards.

WCHR has not provided nursing home and residential care services in the State of Maine. Therefore, the deeming standards do not apply.

### **Changing Laws and Regulations**

Certificate of Need Unit staff is not aware of any imminent or proposed changes in laws and regulations that would impact the project.



### c) Public Need

The applicant is proposing to purchase and operate an existing nursing homes with no changes in licensed capacity or the addition of new services. In order to confirm a continued public need, CONU analyzed demographic and service use trends in the proposed Waterville facility's service area (Kennebec County, Maine). CONU utilized the Older Adults with Physical Disabilities: Population and Service Use Trends in Maine, 2012 Edition and the Adults Using Long Term Services and Supports: Population and Service Use Trends in Maine, 2016 Edition prepared by the Muskie School of Public Service and the U.S. Census Bureau's website located at <https://www.census.gov/quickfacts/>

Kennebec County Maine has an estimated population of 122,302 as of July 1, 2019 with approximately 20.6% of the population age 65 or older. This population is the primary consumer of nursing care services. Maine's 65 and above age group continues to grow at a rate faster than New England and the USA as a whole. Between 2017 and 2027 Maines population age 65 and over is expected to grow by more than 111,000 or 41%. The percentage of Kennebec County population over the age of 65 will continue to grow rise to 25.7% in 2027. With the projected increase in the 65+ population it is likely that SNF/NF beds and will be required over the next decade. Retaining SNF/NF beds in an existing facility will continue to address specific health problems associated with an aging population which is increasingly requiring more intensive care. As mentioned previously, this facility also serves a highly specialized group of individuals who require medical psychiatric services. This facility is one of only two facilities statewide that serves this need. Continuing this facilities operation will have a positive impact on the health status indicators of the population to be served. CONU examined the latest occupancy data available (January 2021) for nursing services in Kennebec County:

Town	Nursing Facility	Total Capacity	Total Occupancy	% Occupancy
Augusta	Augusta Ctr. Health & Rehab	72	68	94.44%
Winthrop	Heritage Rehab & Living	28	22	78.57%
Waterville	Lakewood	105	75	71.43%
Augusta	Maine Veterans Home	120	76	63.33%
Augusta	Glenridge (MaineGeneral)	125	119	95.20%
Augusta	Gray Birch (MaineGeneral)	77	49	63.64%
Waterville	Mt. St. Joseph	111	88	79.28%
Waterville	Oak Grove	90	73	81.11%
<b>Average Occupancy</b>		<b>728</b>	<b>570</b>	<b>78.38%</b>

Although occupancy numbers are considerably skewed by the impact of COVID 19, occupancy in the Kennebec County area is still close to 80%, demonstrating a continued need for services. As noted by the applicant, prior to the pandemic MSJ's occupancy rates were 96%, 96% and 93% for the years 2018, 2019, and 2020 respectively. For comparative purposes CONU is including occupancy data for January 2020 (prior to the COVID 19 epidemic) for comparative purposes.

<b>Town</b>	<b>Nursing Facility</b>	<b>Total Capacity</b>	<b>Total Occupancy</b>	<b>% Occupancy</b>
Augusta	Augusta Ctr. Health & Rehab	72	69	95.83%
Winthrop	Heritage Rehab & Living	28	24	85.71%
Waterville	Lakewood	105	102	97.14%
Augusta	Maine Veterans Home	120	106	88.33%
Augusta	Glenridge (MaineGeneral)	125	118	94.40%
Augusta	Gray Birch (MaineGeneral)	77	74	96.10%
Waterville	Mt. St. Joseph	111	105	94.60%
Waterville	Oak Grove	90	88	97.78%
<b>Average Occupancy</b>		728	686	<b>93.74%</b>

Data from prior to the pandemic shows an average occupancy rate of 93.74%.

In 2010 Kennebec County had 41 nursing beds per 1,000 persons age 65 and above as compared to the State average of 33 beds per 1,000 persons age 65 and above. The available beds in Kennebec County is above the State average, but the pre pandemic occupancy statistics (Roster Date: 1/15/2020) above show an average occupancy of 93.74%. This demonstrates a continuing need for SNF/NF services in the Kennebec County area. This project is not adding additional beds to the system but is simply an ownership change of an existing facility.

The applicant will offer the services affected by the project to all residents of the area proposed to be served and therefore will ensure accessibility of the service.

The project will provide demonstrable improvements in the outcome measures for patients that require skilled, long-term services and geri-psychiatric services. The demographics of this region show an increased 65+ population base that will continue to require these services.

#### **d) Orderly and Economic Development**

This transaction involves a change in ownership of an existing nursing homes in a region that clearly needs these services. WCHR will provide long-term care, skilled rehab services and geri-psychiatric services. This project will have minimal impact on health care expenditures in this region because no change in services or increases in occupancy are projected. In addition, no large capital expenditures are required for this project because existing nursing home buildings will be maintained.

As discussed in the Economic Feasibility section of this analysis, a decreased utilization of MaineCare is projected for this transaction... This project will not increase total healthcare costs, therefore additional State funding is not required.

MSJ has provided necessary services in the Kennebec County area for decades. This transaction will allow this facility, under new ownership, to continue to provide long-term care, skilled care, and geri-psychiatric services with no interruption in services and no disruption to current residents. As stated previously utilizing existing infrastructure minimizes capital expenditures and start-up costs. Based on these factors it is unlikely that a more effective, more accessible, or less costly alternative for providing needed SNF/NF services is available.

#### **e) Outcomes and Community Impact**

MSJ. has provided quality long-term care, rehabilitation, and geri-psychiatric services in the Kennebec County service area for many years. The new ownership, WCHR, plans to retain skilled managers and experienced staff where possible to continue this tradition. For example, the current administrator, the Director of Clinical Services, and the Medical Director will all remain in place. The applicant plans to build upon past practices by implementing Elm Management clinical structure and quality programs to the facility to continue to improve the quality of patient care. The applicant has already identified areas where MSJ is already exceling and other areas that will require additional work. Continuing necessary services in the current geographic area will have a positive impact on the quality of care. Since there will be no change in services and no change in the number of licensed SNF/NF beds or a change in services provided, existing service providers will not be negatively impacted.

**f) Service Utilization**

The Maine Quality Forum has not adopted any principles of evidence-based medicine directly applicable to the application; therefore, this application meets the standard for this determination.

This project will retain the same number of licensed beds and the same services currently in place at MSJ. In addition, there will be no change in services offered in the Kennebec County area. No inappropriate increases in utilization will occur as a result of this project.

**VI. CONCLUSION**

For all the reasons set forth in the Preliminary Analysis and in the record, the CONU concluded that the review standards have been satisfied. The CONU recommends the approval of the CON.

**VII. RECOMMENDATION**

The CONU recommends that this application be Approved.